

performed before the clinician is sent. Also, the term "computer" recited in Applicant's claims 1 and 16 is read inconsistently on either on the triage processing block 114 or the clinician device 140 of Bayne, depending on the needs of the moment. Obviously, the triage processing block 114 is involved in the process taught by Bayne before the clinician is sent to the patient's home, while the clinician device 140 becomes involved in the process taught by Bayne only after the clinician is sent to the patient's home. More particularly, the Final Rejection is based on the illogical theory that the triage processing block 114 decides whether or not to send a clinician *to a patient's home* based in part on an ECG received from the clinician device 140, which device cannot acquire that ECG until after the clinician has arrived at the patient's home.

In accordance with the teaching of Bayne, whether or not a clinician is sent is determined by the triage processing block 114 located at a call center.

The triage processing block 114 includes personnel and/or equipment trained or programmed to receive incoming calls, assess whether the reported medical condition is appropriate for treatment by mobile care entity's clinicians. ... The triage processing block 114, however, refers life-threatening conditions to more appropriate ambulance, life-flight, or other critical care services.

[Bayne, ¶ 0032.] Thus, the triage processing block 114 responds to a call for medical assistance by determining whether emergency services or a medical care clinician should be sent to the patient. In the former case, the triage processing block

114 directs the web server 113 to display a message instructing the patient to obtain emergency ambulance services, for example, by dialing "911". [Bayne, ¶ 0071.] In other words, the patient must fend for him/herself and the triage processing block takes no steps to provide emergency medical treatment.

Applicant's independent claims recite that an ECG is acquired and then sent to the computer for automated analysis and automated scheduling. Bayne contains no disclosure that the triage processing block 114 receives an ECG and determines whether a life-threatening condition exists based on analysis of that ECG. Accordingly, neither claim 1 nor claim 16 can be anticipated by Bayne.

The first step recited in Applicant's claim 1 is "acquiring an electrocardiogram record for a particular patient". For the word "acquiring", the Examiner cites to ¶¶ 0086 and 0089 of Bayne, while for the word "electrocardiogram", the Examiner cites to ¶ 0037, which mentions an electro cardiograph machine. This combination of cites makes no sense. ¶ 0086 of Bayne discloses that the clinician receives dispatch notification from the call center, which may include "information on the patient's reported condition". ¶ 0089 of Bayne discloses that "the clinician device 140 retrieves the patient's medical records" from the medical records center 130 via the Internet. ¶ 0037 of Bayne discloses that various medical care devices, such as an electro cardiograph machine, "may be conveniently stored in a van or other means of

transportation" to the patient's home. It is completely unclear how these three disparate extracts are to be combined to arrive at the step of "acquiring an electrocardiogram record for a particular patient". Is the Examiner saying that the electrocardiograph machine acquires an ECG from a patient, or that the clinician device acquires medical records (which may include an ECG) from the medical records center, or that the clinician on call acquires "information on the patient's reported condition" (which may include an ECG) from the call center? The Applicant does not know.

In any event, each of the foregoing "acquisitions" occurs after the triage process and thus does not represent an ECG "acquired" by the triage processing block 114, which the Examiner later asserts performs an ECG analysis function.

Although not cited by the Examiner, Bayne further discloses that:

If the patient's situation is not an emergency, step 412 leads to step 416, where the triage processing block 114 retrieves the patient's medical records.

[Bayne, ¶ 0072.] Nor is this an explicit disclosure that the triage processing block 114 "acquires" an ECG record. It is well settled that the precondition for anticipation is that each and every limitation in the claim must be disclosed in the cited reference. A mention of "medical records" does not meet the limitation "ECG record". In any event, the foregoing extract from Bayne states that the medical records are retrieved "[i]f the patient's situation is not an emergency".

This means that the medical records are retrieved after a determination has been made whether the patient requires emergency services, i.e., the medical records are not used in the triage process. Thus, the Examiner's later assertion (discussed in detail below) that the triage processing block of Bayne analyzes the ECG record for the purpose of providing emergency medical assistance is mistaken.

The second step recited in Applicant's claim 1 is "sending said electrocardiogram record to a computer". The Examiner finds this step in ¶ 0094 of Bayne, which discloses that, in addition to using on-site clinician tools, "the clinician may also employ one or more remotely located medical care devices 132." [Bayne, ¶ 0094] For this purpose, the clinician couples sensors between the clinician device 140 and the patient. The sensors measure various physiological conditions and relay the acquired information to the clinician device, which in turn relays the measurements to the remote device. The clinician device further retrieves any resultant analysis from the remote device. Assuming, for the sake of argument only, that the remote device is an ECG machine, then the Examiner appears to be saying that the ECG record would be sent from the remote device to the clinician device 140 (the latter being a portable computer - see Bayne, ¶ 0039). Thus, the Examiner appears to be reading Applicant's claim limitation "computer" on the clinician device 140.

In the very next paragraph on page 2 of the Office Action, however, the Examiner reads Applicant's claim limitation "computer" on the triage processing block 140. More precisely, the Examiner finds the claim limitation "said computer determining that said particular patient has a high probability of acute coronary syndrome based at least partly on an automated analysis of data in said electrocardiogram record" in ¶ 0073 of Bayne. Close scrutiny of this paragraph from Bayne reveals no discussion of ECG analysis and no discussion of acute coronary syndrome. Once again the Examiner appears to be willy-nilly assuming that Bayne discloses what it does not disclose. Nor does ¶ 0073 "suggest[]" the use of electrocardiogram record data.

¶ 0073 of Bayne discloses that the triage processing block "determines the appropriate clinician type and equipment required to treat the patient's reported condition." However, as seen in Figure 4 of Bayne, this occurs only if a determination has been made during triage that there is no emergency. Obviously, acute coronary syndrome is an emergency, in which case the triage processing block would never get to step 418 of determining the required clinician type. In an emergency, no clinician is sent to the Patient's home. Therefore the Bayne system does not envision calling a cardiologist to go to the patient's home if the patient is suffering from acute coronary syndrome.

For similar reasons, the Examiner is wrong when he states that Bayne teaches using "an expert system software module for performing diagnosis" by "operating on electrocardiogram data". As previously mentioned, there is no disclosure that the triage processing block receives an ECG record. Moreover, it is nonsensical to assume that the expert system incorporated in the triage processing block would diagnose an emergency condition such as acute coronary syndrome in the face of the clear disclosure in Bayne that his system is not designed to treat patient's who require emergency medical treatment.

Thus, Bayne teaches away from providing a computer that will analyze ECG data to determine whether the patient is suffering from acute coronary syndrome. The Examiner is guilty of wholesale fabrication of functionalities in the Bayne system that are wholly absent from the Bayne disclosure and that are contrary to the express teachings of Bayne.

Nor does Bayne teach anything about automated scheduling. The Examiner cites ¶ 0098 of Bayne for the proposition that the clinician can utilize the clinician device to complete an on-line hospital admission process. Purportedly, this would take the form of the clinician providing a predetermined message and "the clinician device - i.e., a computer - scheduling the procedure" (page 5 of action). This rationale is flawed. In the first place, admission to a hospital is not the same thing as scheduling

"an emergency procedure". The term "scheduling" implies the setting of a time and place for the emergency procedure. Bayne neither discloses nor suggests this. Again the Examiner merely assumes that which is not explicitly disclosed in Bayne. Secondly, the Examiner has again switched gears and now reads the claim limitation "computer" on the clinician device 140, whereas in connection with the purported ECG analysis, the triage processing block 114 was the "computer".

It is well settled that anticipation requires that each and every limitation of the rejected claim be disclosed in the cited reference. The Applicant submits that it is improper to cite the Bayne patent for claim limitations which are neither disclosed nor suggested. In fact, as previously argued, Bayne teaches away from the idea of detecting acute coronary syndrome by ECG analysis. In the face of such emergencies, the Bayne teaching is: call "911" [see ¶ 0071].

In view of the foregoing, the Applicant submits that Bayne does not anticipate either of independent claims 1 and 16 or any claim dependent thereon.

In ¶ 5 of the Office Action, claims 2, 3, 6, 8-10, 17, 18, 22, and 25-27 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Bayne in view of Admitted Prior Art. The Applicant traverses this ground of rejection for the same reasons set forth above and for the following further reasons.

Vis-à-vis the rejections of claims 2 and 3, Bayne teaches automated scheduling of a clinician's visit to a

patient's home. The mere existence of an emergency coronary treatment facility where PTCA is performed does not make it obvious to schedule such a procedure at such a facility in response to electrocardiogram data analysis results indicating an acute cardiac condition. As previously noted, the system taught by Bayne is designed to send out clinician's to patients' homes to provide non-emergency medical treatment.

Vis-à-vis claim 6, the Examiner's assertion that the pre-scheduled appointment block of Bayne "could be programmed to access the schedules of the treatment facilities" is irrelevant to an obviousness inquiry. The mere possibility of doing something does not establish a *prima facie* case for obviousness. The Applicant also disagrees with the assertion that "communication with local hospital admissions resources would provide access to schedules for the treatment facilities within the hospitals." This statement has no basis in fact and is unsupported by citation to prior art. Moreover, the "treatment facilities" recited in claim 6 would obviously be located at different hospitals and thus would not be accessible from the admissions office of a single hospital.

Accordingly, the Applicant requests that the obviousness rejection also be withdrawn.

In addition, the Applicant is submitting herewith a Rule 131 declaration of the inventor swearing back of the Bayne reference. The Applicant submits that the facts established in the accompanying Rule 131 declaration are


Atty Docket No.: 31-CD-5530

sufficient to eliminate the Bayne patent as prior art under 35 U.S.C. §§ 102 and 103.

In view of the foregoing, the Applicant submits that this application is now in condition for allowance. Reconsideration of the application and allowance of claims 1-11 and 16-27 are hereby requested.

Respectfully submitted,

April 24, 2006
Date


Dennis M. Flaherty
Reg. No. 31,159
Ostrager Chong Flaherty &
Broitman P.C.
250 Park Avenue, Suite 825
New York, NY 10177-0899
Tel. No.: 212-681-0600

CERTIFICATE OF MAILING

The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date set forth below.

April 24, 2006
Date


Dennis M. Flaherty